IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE FIFTH DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.V.S. RAO

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WRIT PETITION NO : 9386 of 2003

Between:

Annabathula Umamaheswara Rao, S/o. A. Subbarao,

M.D. Aged 34 years, Sri Anjali Developers Ltd.,

UMC Complex, II Floor, Eluru Road, Vijayawada-2.

..... PETITIONER

AND

1. The Commissioner, Municipal Corporation, Vijayawada.
2. The Assistant City Planner, Vijayawada Municipal Corporation,

Vijayawada.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ, order or direction more particularly one in the nature of writ of mandamus declaring the action of the respondents in demolishing the building bearing D.No.23-33-22 situated in Paparaju Veedhi, Muthyalampadu, Satyanarayanapuram, Vijayawada as illegal, arbitrary and violative of principles of natural justice and consequently direct the respondents not to demolish any part of the said building.

Counsel for the Petitioner: MR.T. PRADYUMNA KUMAR REDDY

Counsel for the Respondent NoS.1 AND 2: MR. T. S. VENKATA RAMANA

The Court made the following:

ORDER:

The petitioner seeks declaration that the action of Vijayawada Municipal Corporation in demolishing the building bearing Door No.23-32-22 situated at Paparaju Veedhi, Muthyalampadu, Satyanarayanapuram, Vijayawada is illegal and arbitrary.

The petitioner is Managing Director of M/s. Anjali Developers Limited. They entered into development agreement with the land owners in R.S. No.128/2, obtained necessary permission from the Corporation and started construction. On 17.9.2001, the Corporation served a notice under Section 452 of the Hyderabad Municipal Corporation Act, 1955 (HMC Act, for brevity) to the petitioner. Impugning the same, the petitioner filed a writ petition being W.P. No.20379 of 2001 and this Court by order dated 19.9.2001 gave liberty to the petitioner to submit explanation within ten days thereafter and the Corporation was directed to consider the representation and pass appropriate orders. The petitioner thereafter allegedly submitted representation. Again, the Corporation issued a notice for prosecution for alleged unauthorized construction of third floor. The petitioner was also asked to compound the contravention by paying penalty amount of Rs.10,000/- (Rupees Ten thousand only). Thereafter, it appears the Corporation affixed a notice under Section 636 of HMC Act. On 12.5.2003 a News item was published that the Corporation is likely to demolish unauthorized structures in the complex being constructed by the petitioner. Therefore, the present writ petition is filed. This Court admitted the writ petition and granted interim stay on 13.5.2003. The Corporation has moved WVMP No.2244 of 2003 for vacating the interim order.

In the Counter affidavit filed by the Commissioner of Vijayawada Municipal Corporation while denying the allegation that no notice was served, it is stated that the petitioner refused to receive notice under Section 452 of HMC Act and the same was affixed to the door of the petitioner's property. It is also stated that the notice/order under Section 636 of HMC Act was refused by petitioner and the same was affixed. The petitioner deviated from the sanctioned plan and made unauthorized construction and after considering the representation of the petitioner, the orders are passed duly complying with the directions of this Court in W.P.

No.23079 of 2001. Though the Interlocutory application is listed, the matter was finally heard with the consent of the learned Counsel for the petitioner and learned Standing Counsel for the Respondent Corporation and is being disposed of.

The matter was initially listed before this Court on 7.9.2004. This Court directed the learned Standing Counsel for the Corporation to produce necessary file, as the learned Counsel for the petitioner strenuously disputed the allegation made by the corporation that the notice was duly served affixing the same on the door. After hearing the learned Counsel for the petitioner and learned Standing Counsel, it is clear that there is a serious dispute regarding service of the notice at the stage Section 452 (1) as well as at the stage of Section 636 of HMC Act. A copy of the order/notice under Section 636 of HMC Act dated 2.5.2003 is found in the file, which does not show that the Corporation has considered the representation of the petitioner allegedly made on 29.1.2001. The said order was issued with reference to an inspection conducted by the technical wing of the Corporation on 2.5.2003. It is now well settled that even before issuing an order under Section 636 of HMC Act, the Corporation is under obligation to follow the procedure contemplated under Section 452 of HMC Act. The very fact whether notice under Section 452 (1) of HMC Act is duly served on the petitioner is in dispute. Therefore, instead of keeping the matter pending in the second round of litigation, the writ petition is disposed of in the following manner:

The learned Counsel for the petitioner has been given a copy of the notice/order dated 2.5.2003 passed under Section 636 of HMC Act. The same shall be treated as notice and the petitioner is given liberty to file explanation within two weeks from the date of receipt of a copy of this order. If necessary, the Commissioner or duly authorized Officer shall inspect the premises with reference to the allegations made in the order dated 2.5.2003 and consider the explanation in the light of such inspection and pass appropriate orders within a period of four weeks from the date of submission of the report. Till this exercise is completed, it shall be *status quo* as on today and the petitioner is also directed not to make any further constructions.

The writ petition, with the above observations and directions, is disposed of.

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October 5, 2004. **V.V.S. RAO, J**

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To

1. The Commissioner, Municipal Corporation, Vijayawada.

2. The Assistant City Planner, Vijayawada Municipal Corporation,

Vijayawada.

3. 2CD copies.